

Original: English

**FTAA - COMMITTEE OF GOVERNMENT REPRESENTATIVES ON THE PARTICIPATION  
OF CIVIL SOCIETY**

**COVER SHEET**

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| <b>Organization (s)<br/>(if applicable)</b> | Business Network for Hemispheric Integration (BNHI) |
|   |   |
| <b>Country (ies) / Region (s)</b>           | The Hemisphere                                      |

|                        |   |                 |                   |
|------------------------|---|-----------------|-------------------|
| <b>Number of Pages</b> | 3 | <b>Language</b> | English / Spanish |
|------------------------|---|-----------------|-------------------|

**ISSUES ADDRESSED** (Check all that apply)

|                              |          |  |  |
|------------------------------|----------|--|--|
| Agriculture                  |          | Subsidies, Antidumping and Countervailing Duties |  |
| Competition Policy           |          | Civil Society                                    |  |
| <b>Dispute Settlement</b>    | <b>x</b> | Electronic Commerce                              |  |
| Government Procurement       |          | Smaller Economies                                |  |
| Intellectual Property Rights |          | The FTAA Process                                 |  |
| Investment                   |          | Other:   |  |
| Market Access                |          |  |  |
| Services                     |          |  |  |

**EXECUTIVE SUMMARY – 2 pages maximum – (see Open Invitation):**

**AGREED RECOMMENDATIONS**

1. The dispute settlement system of the FTAA should be compatible with WTO rules and procedures. However, we recommend the improvement of standards so that all participants can fully take advantage of the system.
2. In order to ensure the compliance of member states, the dispute settlement system should form part of the FTAA agreement as a whole.
3. It should be understood that the implementation of a system of such nature, by all member states, must take effect in all respective territories without exception. We recognize that this may require modifications of current domestic legislation.
4. It is of outmost importance to adequately train all the parties involved in the system and specifically judges, public servants and lawyers. This will ensure better performance in the application of a dispute settlement system.
5. In situations involving a commercial dispute in connection with a violation of the agreement, the private parties should have direct access to the dispute settlement system and should be allowed to initiate a dispute without state interference.
6. The organizational body of the dispute settlement system should not be supranational in nature. Its institutional basis should follow the structure of the WTO. The system should be composed of the following steps: consultations, panels and an appellate body with permanent characteristics.
7. The mechanisms of the dispute settlement system should ensure clarity, coherence, efficiency and transparency. For instance, the system should receive public support. All information should be made available to the public, including pleadings and decisions. Any information connected to the selection process of individuals involved in the application of the system should be accessible by the public.
8. The decisions of the dispute settlement system should embody the reinstatement of the concession, the elimination of the measures, which gave rise to the controversy, and the possibility of retaliatory measures in the event of non-compliance by the aggressor state.
9. The decisions emanating from the dispute settlement system should be binding on all parties whether the dispute is between states, private parties or state and private parties. The processes of negotiation, conciliation and mediation must also be binding on all parties in the event that agreement is reached.
10. Arbitration, conciliation and mediation originating from private commercial disputes must be administered by the private sector. It is understood that private parties must have the freedom to choose their own method of dispute resolution. We suggest that the system of the Inter-American Commission on Commercial Arbitration should be applied as a forum of default and its final decision should be binding on all parties. We strongly recommend that parties should adhere to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of New York (1958) and the Inter-American Convention on International Commercial Arbitration of Panama (1975).
11. The dispute settlement system of the FTAA should benefit from the knowledge of global institutions. Within the FTAA, many issues emanating from those institutions should be addressed without creating new dispute settlement rules and procedures.
12. Given the co-existence of regional and bilateral agreements in the hemisphere and their respective dispute settlement provisions, the dispute settlement system with the greatest degree of integration should prevail without jeopardizing existing FTAA rules.
13. The private sector should actively and continuously participate in the FTAA negotiating process regarding the dispute settlement system.
14. Smaller economies lacking the capacity to adequately use alternative dispute resolution systems should receive appropriate training and technical assistance. They should not be disadvantaged from using such mechanisms.

**AREAS OF DIVERGENCE**

All the recommendations were reached with full consensus. Thus, there were no areas of divergence.

Chair: Carlos Jorquiera, Chile Vice-Chair: Jorge Bardier, Uruguay

Rapporteur: Isabelle Girard, Canada